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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 689.

MOORE-MCCORMACK LINES, INC.,
Petitioner,

—against—

MURIEL W. HUME,
Respondent,

AMERICAN-WEST AFRICAN LINE, INC.,
Defendant.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

GEO. WHITEFIELD BETTS, JR.,
WILLIAM LOGAN, JR.,
Counsel for Petitioner.

THE COURT PRESS, N. Y. C.

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AMERICAN-WEST AFRICAN LINE, INC.,

Defendant.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Moore-McCormack Lines, Inc., respectfully prays for a writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Second Circuit, which reversed a summary judgment and final order dismissing the complaint in the District Court for the Southern District of New York and remanded the case for trial.

I. THE PROCEEDINGS AND DECISIONS OF THE LOWER COURTS.

The action was instituted at law by a seaman to recover damages under the Jones Act (46 U. S. C. A. 688) for

tuberculosis, allegedly caused by the joint and several negligence of both defendants while employed on their vessels. Defendants moved for summary judgment on the ground that the causes of action stated in the complaint were released.

Respondent had burned his arm on petitioner's boat and at the time the release was delivered both petitioner and respondent thought that respondent was suffering only from the burn. Respondent did not know that he was suffering from tuberculosis. No one knew it or suspected it. That is conceded (R. 75).

The release, which was under seal and was delivered five weeks before this action was commenced, recited specifically that it was respondent's intention to release petitioner from any right or claim on account of the burn "*and, in addition to that * * * to wipe the slate clean as between myself and the parties released, even as respects injuries, illnesses, rights and claims not mentioned herein or not known to me.*" (Italics ours.)

The complaint, affidavits of five employees of petitioner, two affidavits of petitioner's counsel and seven exhibits were duly submitted to the court in support of the motion. Two affidavits, one of respondent and one of his attorney, both prepared in the office of competent counsel duly admitted to practise in this court, were submitted in opposition. On these proper papers, pursuant to statutory authority as defined by this court in Rule 56 (b) and (c) of the Rules of Civil Procedure for District Courts of the United States, the District Court granted the motion as to petitioner and denied it as to defendant American-West African Line, Inc., with an opinion (R. 31-38; *Hume* v. *American-West African Line, Inc., et al.*, 36 Fed. Supp. 880).

The District Court, Clancy, *J.*, found as a fact, that both respondent and petitioner knew and understood that the

release was meant to discharge not only respondent's claim for the burns, but also every claim he had against petitioner by reason of events which had occurred before the delivery of the release whether or not the parties or either of them knew of the existence of such claims.

The District Court also found as a fact that respondent fully comprehended the nature of his act saying (R. 32-33):

> "No single circumstance attending the document's execution is disputed. There is no claim made that the plaintiff is ignorant or was lacking in intelligence and we think it fully established that his execution of the release was his own understanding, deliberate act performed after a free, untrammeled and comprehending meeting of his mind with that of his employer's representative. We are unable to discern any question of fact whatever to warrant any hesitation in reaching this conclusion."

After finding "no hint of a claim of coercion or duress or fraud" (R. 32) and after seriously considering the fact that a seaman is a ward of the court, the District Court said (R. 33):

> "But unless this fact, standing alone, voids a release, we cannot save him in his present situation."

The District Court further found that there was no ground asserted of inadequacy of consideration, and that even this, of itself, would not be sufficient to cancel the release under existing law (R. 33). It found as a fact that neither party was aware that respondent had tuberculosis when he signed the release, although respondent knew of the existence of the alleged acts of negligence of which he was complaining (R. 35). It held that a contention of mutual mistake of fact regarding the imminence

of tuberculosis would contradict the language of the release, and that in any event neither this nor a unilateral mistake would make the release voidable (R. 36).

It also found as a fact that respondent intelligently released his claim for unknown causes of action and that the words of the release, which dealt specifically with claims for unknown illnesses even though they were not mentioned in the release or not known to the seamen, were intended to and did discharge the claim which respondent presented on account of tuberculosis:

> "Whether a party—even a seaman—may have foregone a recovery for unknown as well as known causes of action poses a question of fact and not one of law. *Kirchner* v. *The New Home Sewing Machine Co.*, 135 N. Y. 182. We have found as a fact that in this case the plaintiff did by intelligently delivering this release which says so. We know of no law limiting a seaman's right to contract if it be established that his action is intelligent, free and without claim of fraud. *Sitchon* v. *American Export Lines, Inc.*, 113 Fed. (2d) 830. We know of no rule of public policy which does or should forbid the exercise of his own judgment when it is the result of full consideration and understanding of his act in dealing at arm's length with his employer's representatives" (R. 36).

The Court found there was no issue of fact and in arriving at its decision said:

> "We have reached the conclusion that if the release in this case is not valid and binding upon the plaintiff, that it is inconceivable under what circumstances a valid general release may be executed by a seaman" (R. 33).

The Circuit Court reversed the decision of the District Court with an opinion written by Judge Frank and con-

curred in by Judge Learned Hand and Judge Chase. But, the Circuit Court did not reverse any of the District Court's findings of fact, nor did it find any facts contrary to, in addition to or in amendment of the findings of fact of the District Court. Notwithstanding this, the Circuit Court said that "There should be a trial of the issues, on evidence, at which the burden will be on the appellee to sustain the release 'as fairly made with and fully comprehended by the seaman' * * *" (R. 69). The Circuit Court did not point out in what respect the release was not "fairly made with and fully comprehended by the seaman".

The Circuit Court also said that on such a trial it would be significant "whether appellant had any knowledge or intimation, when he signed the release, that he was suffering, incipiently or otherwise, from tuberculosis" (R. 69). In so saying the Circuit Court must have overlooked the conceded fact that neither respondent, petitioner nor anyone else knew or suspected this (R. 75). Indeed, in making the above statement on page 23 of its opinion (R. 69) it must have forgotten its earlier statement made at page 2 of its opinion (R. 47):

> "At the time he signed the release, neither Hume nor appellee knew that he was suffering from tuberculosis."

The reason given for the Circuit Court's decision was that seamen are "wards of admiralty" and, therefore, entitled to privileged treatment respecting the laws and rules applicable to a motion for summary judgment. In thus granting respondent the privilege of having his case decided twice the Circuit Court rested its decision, intentionally and with full appreciation of all of the implications, on the proposition that seamen do not have

the same liberty to contract with their employers as other men have. It said:

> "The liberty of the individual employee to bind himself firmly—absent fraud, coercion or the like—in a contract with his employer, no matter how harsh or unusual its terms, is not to be strictly applied to workers who go to sea. As to such provisions in their contracts, because they are 'wards of admiralty', a distinctive doctrine is applicable: a peculiar burden is cast on the employer" (R. 68).

Under this doctrine as defined and applied by the Circuit Court in this case the burden on the employer is so peculiar that its contract entered into with the utmost good faith was not upheld because the seaman was not represented by a lawyer or other competent adviser at the time he signed it. The Circuit Court refused to follow its previously decided case of *Sitchon* v. *American Export Lines, Inc.*, 113 F. (2d) 830, cert. den. 311 U. S. 705, in which it affirmed a summary judgment against a seaman who had been represented by a lawyer and doctor when he signed a release of a personal injury claim, and assigned as the reason:

> "Here the seaman had no lawyer nor other competent adviser representing him when he signed the release" (R. 69).

Petitioner urges that the nature of the seaman's status has been misconceived and misapplied by the Circuit Court of Appeals. Such a restriction on a seaman's freedom to contract is so fundamental as to lead inevitably to strange results, not the least of which is the result in this case.

II. Jurisdiction.

(a) The jurisdiction of this Court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13, 1925, Chap. 229, Sec. 1, 43 Stat. 938 (U. S. C. A., Title 28, Sec. 347-a).

(b) A precedent to sustain the jurisdiction of this court to grant a writ of certiorari in the present case is *United States* v. *Guaranty Trust Co. of New York*, 91 Fed. (2d) 898, cert. granted 302 U. S. 681, reversed 304 U. S. 126, where summary judgment for petitioner on affidavits setting up the statute of limitations as a defense was reversed by the Circuit Court of Appeals for the Second Circuit, certiorari granted by this Court due to the importance of the questions involved, and the judgment of the Circuit Court reversed.

(c) The date of the judgment to be reviewed is July 9, 1941 (R. 82).

III. The Questions Sought to Be Reviewed.

Is it necessary that seamen be represented by lawyers or other competent advisers when, with complete understanding of the risk they take, they release their employers for claims for personal injuries? Do seamen with full awareness of the consequences of their acts have the same liberty to make binding agreements to settle claims for personal injuries as do other adults? Can they, merely because they are "wards of admiralty", avoid settlement agreements if and when they become displeased with the results? Has the phrase "wards of admiralty" the same significance when seamen are suing at common law as it has in courts of admiralty? In other words, are seamen also wards of a common law jury?

Based upon the facts of this case the following questions are presented:

May a seaman, acting voluntarily and with complete understanding, execute a general release under seal, the exact nature and import of which he expressly admits he knew at the time he signed it, and which release specifically discharged his employer from any right or claim on account of burns "and, in addition to that, * * * wipe [d] the slate clean as between myself and the parties released, even as respects injuries, illnesses, rights and claims not mentioned herein or not known to me", where no one knew he was suffering from tuberculosis at the time he signed the release, and later avoid the legal effect of the release on the ground that seamen are "wards of admiralty" and that respondent was not represented by a lawyer or other competent adviser when he signed the release; there being no charge of fraud, mistake, duress, deceit or overreaching conduct on the part of his employer.

Is the "strict scrutiny" to which seamen's wage releases are subjected in admiralty to be applied also to seamen's releases of contentious, unliquidated claims for personal injuries in a common law court? Is it not sufficient protection for seamen because they are "wards of the admiralty" that their settlement agreements shall be strictly scrutinized to ascertain whether there has been any fraud, mistake, duress, misunderstanding or the like and, if after such scrutiny none of these is found, that the release should be sustained? In the absence of fraud, overreaching and the like are shipowners and seamen to be restricted in their dealings with each other in the adjustment of personal injury claims and, if so, what are the limits, if any, to these restrictions?

The precise questions here presented have never been but should be settled by this Court.

This court so far as known to petitioner has never held that seamen do not have the same liberty to execute binding releases for personal injuries as do other adults. A seaman's release was considered by this Court in *Pacific Mail S. S. Co.* v. *Lucas*, 258 U. S. 266, but there an Act of Congress was involved and the statute specifically referred to wages and not to releases by seamen of claims for personal injuries. Here the release is the result of a compromise of an unliquidated claim and not a release of a sum certain for which there is statutory provision.

The effect of words in a release discharging claims on account of unknown injuries, so far as known to petitioner, has never been before this Court for determination either in a seaman's action or otherwise.

The Circuit Court decided the questions here presented in a way inconsistent with its own decision in the case of *Sitchon* v. *American Export Lines*, 113 F. (2d) 830, cert. den. 311 U. S. 705, where it unqualifiedly set forth the test to be applied regarding seamen's releases, as follows, page 832:

> "The question in any case is whether the seaman, if he is acting alone, has intelligence enough fully to understand the situation and the risk he takes in giving up the right to prosecute his claim or whether, if he is acting under advice, that advice is disinterested and based on a reasonable investigation."

The decision in the case at bar is even contrary to and more stringent than the Circuit Court's own decision in *Johnson* v. *Andrus*, 119 F. (2d) 287, decided April 28, 1941, which involved a seaman's wages, not personal injuries, and in addition, was in admiralty, not at law.

The decision here is also contrary to the decisions of at least two other circuits which have dealt with seamen's releases in personal injury cases, where the courts after

carefully scrutinizing the releases and finding no evidence of fraud, deceit, mistake, duress or the like have refused to set them aside.

Harmon v. *United States*, 59 F. (2d) 372, Circuit Court of Appeals, Fifth Circuit;
The Adonis, 38 F. (2d) 743, Circuit Court of Appeals, Third Circuit.

As a result in the Circuit Courts of Appeal the law controlling these important issues is in a confused, conflicting and uncertain state and should be clarified by this Court.

IV. The Facts.

The undisputed facts are as follows:

From February 13, 1940 to May 15, 1940 respondent was employed as a seaman on the S. S. "Zarembo", owned and operated by defendant American-West African Line, Inc. From June 6, 1940 to June 20, 1940 he was similarly employed on the S. S. "Mormacyork" owned and operated by petitioner. On June 21, 1940 respondent told petitioner's claims adjuster that he had burned his hand the previous night and had been treated at a hospital (R. 7).

Respondent was told to get his wages and discharge and go to the United States Marine Hospital where he could be treated and he was further told to go to petitioner's office, where he would be advanced maintenance. On July 1, 1940 respondent went to petitioner's office, where he was advanced $15, for which he executed a petty cash voucher, and he was told to come back in about a week. This was repeated on July 8, 1940 with like results. No mention of settlement was made by respondent or petitioner at either of these meetings (R. 7, 8).

On July 15, 1940 respondent again appeared at petitioner's office and stated that he wanted $250 in full settlement of any claims he had against the company. He was told that it would be necessary to see the Company's doctor for an examination. An appointment was made for this examination. On this day respondent was again given $15 and signed another petty cash voucher. He was also told to come back in about a week and to bring his discharge from the United States Marine Hospital, and that in the mean time petitioner would in all probability receive the company doctor's report, and that the parties would then be in a position to talk settlement (R. 9).

On July 23, 1940 respondent again appeared at the petitioner's office and presented his discharge from the United States Marine Hospital, on which there appeared the notation: "Discharged—Fit for duty July 15, 1940." The report of the company's doctor, dated July 16, 1940, stated that respondent would be able to return to his duties within a period of two weeks (R. 30).

After an examination of the medical reports, petitioner's representative and respondent had a considerable discussion regarding settlement, and finally arrived at a figure of $150 which included the $45 previously advanced. Respondent was told that it would be necessary for him to sign a petty cash voucher and a release of all his claims against the company. He was told that this release would release petitioner of everything he had against it and in signing it that he would be "signing his life away". Respondent stated that he knew this and was anxious to go back to his Nebraska home. A petty cash voucher for $105 was prepared for respondent's signature, together with the release (R. 10).

Respondent read the release. While he was reading it petitioner's representative again emphasized the fact that he was "signing his life away". The respondent

then executed the release by signing three copies. At the same time he wrote in his own handwriting on each copy of the release his answers to five typewritten questions and thus indicated his complete understanding of the document's provisions. Among the questions asked him was the following:

"Have you read this paper from beginning to end?"

He answered this question by writing the word "Yes". Another question was:

"What is this paper which you are signing?"

The respondent answered this by writing the words "release of everything". The paper which the respondent thus said he had read and which he so described contained a provision, already referred to, that in addition to its being a release for known injuries it was a release also for unknown illnesses, injuries and claims (Exh. E).

Three witnesses saw respondent sign the release and they signed their names thereto as witnesses. In their presence respondent acknowledged that he fully understood its contents (R. 10). A true copy of the release is attached to and made a part of this petition.

Two affidavits were submitted by respondent in opposition to the motion, one by himself and one by his attorney, in which none of the statements of fact set forth in petitioner's affidavits were denied. In these affidavits respondent took the position that at the time he settled his claim he did not know, nor did he have any reason to believe he was suffering from pulmonary tuberculosis and therefore "denies that there was any intention on his part to release the defendants for the contraction of pulmonary tuberculosis of which he was not advised at the time" (R. 26). However, the respondent did not deny that he understood the provisions of the release nor did he deny that in executing it he intended

to discharge the petitioner from all claims which he had, even including those on account of unknown illnesses.

About a week after delivery of the release respondent went to a hospital, because of an attack of grippe, and subsequently he was advised that he was suffering with pulmonary tuberculosis (R. 26). About four weeks later the summons and complaint were served on both defendants wherein respondent asked damages in separate causes of action against each defendant for the development of tuberculosis, or for the aggravation of an existing tuberculosis, by reason of each defendant's negligence in furnishing improper sleeping quarters on board its vessel. In a third cause of action respondent alleged joint negligence by the defendants and he sought maintenance and cure in addition to damages for negligence (R. 3, 5).

Both defendants moved for summary judgment. Petitioner claimed that the respondent's causes of action were released and the defendant American-West African Line, Inc., contended that the release of one joint tort feasor released the other.

V. Reasons for Granting the Writ.

This case involves very important questions of Federal law which have never been, but should be, settled by this court.

A. If the Circuit Court's opinion is permitted to stand shipowners and seamen will be left in a twilight zone of uncertainty which is not only of no benefit to either but an unkindness to both. The large majority of personal injury claims made by seamen are settled by the owners and seamen and without benefit of counsel to either party. Such claims naturally involve differences of opinion as to how much should be paid in settlement.

A settlement of such a claim which is not final is no settlement at all. If a settlement fully comprehended by the seaman and made without fraud, duress or overreaching is not to be considered final because all seamen are "wards of admiralty" and therefore not to be treated as other men, shipowners throughout the country will be placed in a position of settling these cases at their peril. If parties are not assured that there is a method by which settlements can be made final there is no inducement to settle. To insist that seamen be represented by counsel would naturally result in increased litigation and expense. Settlement of such claims should be encouraged not frustrated.

B. Whatever may be said of the possibility of applying the Circuit Court's doctrine in admiralty it is obvious that for practical reasons it cannot be applied at common law. Under the decision of the Circuit Court lower courts would be justified in charging juries in personal injury cases that seamen have not the same liberty to contract as other men and their releases are voidable unless entered into with advice of counsel or other competent advisers, even though there is no fraud, duress or overreaching. Such a charge is tantamount to a direction that the jury find in favor of the seamen and the shipowner's honest attempts to compensate seamen for injuries would be in vain.

C. In the absence of a standard yardstick to measure the amount which should be paid in settlement of personal injury claims seamen and shipowners have always settled their differences by bargaining. In so doing each party assumes the risk of making a bad bargain. If this method is to be abrogated and a more accurate method of computing the amount to be paid substituted, it is submitted that Congress should provide this by legisla-

tion. Such a method is a Workmen's Compensation Act applying to seamen. Legislation to this effect is now pending in Congress, but it is bitterly opposed by the seamen themselves. In the absence of such legislation the freedom of seamen and shipowners to compose their differences in personal injury claims should not be shackled by such burdensome restrictions as enunciated by the Circuit Court in this case.

D. The fact that respondent released petitioner from claims for all unknown as well as known injuries should not affect the validity of the release. This fact appeared to influence the decision of the Circuit Court without justification in our opinion. A claim for the causing or aggravation of an alleged disease made some time after the seaman had left the ship and after he had received medical attention at the Marine Hospital and been discharged, and had been examined by the petitioner's doctor, is plainly most difficult to investigate to determine whether it has any basis in fact. The purpose of a general release is to settle all differences between the parties whatever may be the cause and especially so in a case like this where a seaman leaves his ship and no complaint is made at the time. Certainly there is no sound reason for not sustaining the release on such a ground.

Petitioner urges that a clear cut decision on the validity of the release which is commonly used by shipowners and seamen and in issue under the facts presented would be welcomed by the entire shipping industry due to its vital importance.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Second Circuit, commanding the said

court to certify and send to this court, on a day to be designated, for its review and determination, a full and complete transcript of the record of all proceedings in the said Circuit Court of Appeals held in this cause; that the judgment and order of the Circuit Court of Appeals made and entered in said cause on the 9th day of July, 1941, may be reversed by this Honorable Court and the complaint dismissed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

MOORE-McCORMACK LINES, INC.,
Petitioner.

GEO. WHITEFIELD BETTS, JR.,
Counsel for Petitioner.

State of New York,
County of New York—ss.:

GEO. WHITEFIELD BETTS, JR., being duly sworn, deposes and says: He is one of the counsel for the above named petitioner; that he has read said petition and that said petition is true to the best of his knowledge, information and belief.

GEO. WHITEFIELD BETTS, JR.

Sworn to before me this
6th day of October, 1941.

ISABEL W. BONNER,
Notary Public,
New York County.
Co. Clk's No. 238, Register's No. 2B19.
Commission expires March 30, 1942.